OPINION OF ADVOCATE GENERAL DARMON
delivered on 25 March 1992 *

Mr President,
Members of the Court,

1. The preliminary reference from the Conseil d'Appel d'Expression Française de l'Ordre des Architectes (the Francophone Appeals Committee of the Association of Architects) (hereinafter the 'Appeals Committee') once more requests an interpretation from the Court of Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (hereinafter 'the directive'). [1]

2. On 9 February 1989, Mr Bauer, a German national, obtained the Diploma of Architecture ('Diplom- Ingenieur (Fachhochschule)') awarded by the Fachhochschule of Stuttgart, Germany. This diploma attested to four years of studies which included two practical semesters (Praxissemester).

3. Residing in Belgium, Mr Bauer applied to have his name entered on the list of trainees of the Association of Architects for the province of Brabant and was refused on 26 June 1990 by the Council of the Association of Architects [2] on the ground that his diploma did not comply with the requirements of the directive. [3]

4. The Appeals Committee questions the Court on the scope of the concept of 'four years of studies' within the meaning of Article 11 of the directive as follows:

'Must the third subparagraph of Article 11(a) be interpreted in such a way that education and training which lasts for four years and which includes two integrated "Praxissemester", supervised by the Fachhochschule of Stuttgart, must be regarded as four years of studies?'

5. It is not disputed [4] that Mr Bauer, who commenced his studies in architecture on 9 March 1984, was entitled to rely on the transitional measures applicable, pursuant to Article 10 of the directive, to all Community nationals who commenced their studies in the third academic year at the latest following notification of the directive (August 1985).

6. The latter lays down, in Chapter III entitled 'Diplomas, certificates and other evidence of formal qualifications enabling the holder to take up activities in the field of architecture by virtue of established rights or existing national provisions', transitional rules which must be carefully distinguished from the *definitive rules* governed by Chapter II entitled 'Diplomas, certificates and other evidence of formal qualifications enabling the holder to take up activities in the field of architecture under the professional title of architect'.

* Original language: French.

1 — OJ 1985 L 223, p. 15.

2 — Confirming, on appeal, an earlier decision of 30 March 1990.

3 — See the decision of the Appeals Committee at p. 2.

4 — Ibid.

7. Although the definitive rules do not provide for the harmonization of education and training, they do lay down the criteria for their recognition. Chapter II does not list the diplomas to be recognized by the Member States but prescribes mutual recognition of the diplomas, certificates and other evidence of formal qualifications which meet the requirements laid down in Articles 3 and 4.

8. In addition to the qualitative requirements laid down in Article 3 concerning the content of the teaching, which must maintain a balance between the theoretical and practical aspects of the education and training in architecture and ensure that these are acquired, there is also a requirement laid down in Article 4 as to the length of the studies. Article 4(1)(a) provides that the total length of education and training must consist of a minimum of either *four years of full-time studies* in a university or comparable educational establishment, or at least six years of study at a university or comparable educational establishment of which at least three must be full time. Notwithstanding this, Article 4(1)(b) provides that the requirements laid down in the directive will be met in the case of the education and training given over three years by the German 'Fachhochschulen' provided that such education and training is supplemented by a four-year period of professional experience in that State.

9. In Case C-310/90 *Conseil National de l'Ordre des Architectes* v *Egle*[5] (hereinafter 'Egle') the applicant, holder of a diploma awarded by the Fachhochschule of Constance following four years of studies which included two practical semesters, had applied to have his name entered on the Register of the Council of the Association of Architects for the province of Limburg in reliance upon Article 4(1)(a). The application was refused on the ground that the applicant's diploma did not meet the requirements laid down in the directive.

10. Asked whether such education and training complied with the requirements of Article 4, the Court ruled that this article 'must be interpreted as meaning that education and training which lasts for four years and which includes practical semesters organized and supervised by the Fachhochschule must be regarded as four years of full-time studies'.[6]

11. With regard to the transitional rules, Article 10 provides that the Member States are to recognize the diplomas listed in Article 11 and give these the same effect within their territory as the diplomas which they themselves award in architecture.

12. The German diplomas listed in Article 11 include those awarded by the Architecture Departments of the Fachhochschulen, it being laid down that when these attest to a period of study of less than four years but of at least three years, a minimum of four years of professional experience is also required.[7] It follows *a contrario* that when the education and training consists of four years of studies the requirement of a period of professional experience does not apply.[8] In the context of the transitional rules, the diplomas awarded by the Fachhochschulen are subject to three different sets of rules:

5 — [1992] ECR I-177.

6 — Ibid., operative part of the judgment.

7 — Note the similar wording in subparagraph 2 of Article 4(1).

8 — See my Opinion in Egle supra, paragraphs 18 and 21.

— where the length of the studies is less than three years, the Member States do not have to recognize the diploma;

— where the length of the studies is less than four years but includes at least three years, the diploma must, in order to be recognized, be accompanied by a certificate attesting to four years of professional experience;

— where the length of the studies is at least four years, the diploma must be recognized by the Member States.

13. It should be noted that, very logically, the diplomas of persons falling within Chapter III who undertook their studies prior to the entry into force of the directive are subject to less severe requirements than those laid down in Article 4. This explains why in the context of the transitional rules there is no requirement for the studies to have been undertaken *full time*.

14. In the context of the definitive rules the directive lays down *requirements*. It is for the Member States within whose territory an application to become an architect is made to verify that the applicant's diploma meets with these requirements: the 'host' Member State has a power of appraisal.

15. On the other hand Article 11 sets out the list of diplomas which the Member States *must recognize without verifying that these comply with the requirements laid down in Articles 3 and 4*.[9] The host State is bound by the list laid down in Article 11.[10] Article 10 of the directive does in fact specify that these diplomas need not necessarily fulfil 'the minimum requirements laid down in Chapter II'.

16. Thus, a diploma awarded by the Fachhochschulen must be unconditionally recognized as long as the length of the studies is four years.

17. Does training and education given by the Fachhochschule of Stuttgart which lasts four years and which includes two Praxissemester meet with this requirement and in particular are these part of the 'length of the studies' within the meaning of Article 11? That is the question raised by the Appeals Committee.

18. I will say at the outset that there can be no doubt about the matter, taking into account the answer given by the Court in *Egle* coupled with the paradox that would arise if the Praxissemester were included in the length of the studies in the context of the definitive rules and not in the context of the transitional measures, though the latter are less demanding.

9 — The reference in the third subparagraph of Article 11(a) to Article 4(1)(b) is solely aimed at determining the requirements which must be fulfilled by the certificates attesting to a period of four years' professional experience in the Federal Republic of Germany in cases where the education and training lasts three years.

10 — As to the extent of the powers of the host State in a different context, see my Opinion in Case 130/88 Van de Bijl [1989] ECR 3039 (judgment of 27 September 1989) on the extent of the host Member State's control where authorization to undertake a self-employed professional activity is granted pursuant to a certificate attesting to a professional activity granted by the competent authority of the state from which the person concerned comes. The Court ruled that the checking of the validity of this certificate by the host State must be limited to manifest inaccuracies (see paragraphs 22 and 27 of the said judgment).

19. In the present case, as already noted, the applicant undertook his studies at the Fachhochschule of Stuttgart. This educational establishment is subject to the same rules as the Fachhochschule of Constance attended by the applicant in the *Egle* case. The third subparagraph of Paragraph 31 of the Law governing the Fachhochschulen of Baden-Würtemberg of 4 June 1982 [11] specifies that: 'In principle, a course in a Fachhochschule is spread over four years. As a general rule, it includes three years of studies at the Fachhochschule and two semesters of professional experience (Praxissemester)'. [12]

20. In my Opinion in *Egle*, [13] I took the view that the practical semesters, as long as these were supervised by the educational establishment, were an integral part of the studies undertaken in a Fachhochschule and had to be taken into account when calculating the four-year period. The Court adopted this view in its ruling.

21. I will therefore limit myself to a few observations in answer to the new arguments raised by the defendant in the main proceedings.

22. Far from being a professional traineeship independent of the studies undertaken, [14] the Praxissemester is an *integral part* of these studies, as is laid down in Paragraph 7 of the Regulations governing the studies and examinations of the Fachhochschule of Stuttgart. [15]

23. This principle is not called in question by the fact that prior education and training or professional experience may be taken into account for the purposes of calculating the length of a practical semester. Indeed, apart from the fact that the taking into account of the prior education and training presupposes the approval of the Fachhochschule, it can only replace the first Praxissemester. Similarly, the second practical semester may only be substituted by prior professional experience in 'exceptional' circumstances and on condition that it lasted several years and that it led to the acquisition of a complete training. [16]

24. Performed under the supervision of one of the educational establishment's teachers, [17] the practical semester leads to the granting not only of a 'training certificate' (Ausbildungsnachweise), but also of a 'recognition certificate' (Anerkennung), without which a student cannot complete his studies. [18]

25. Moreover, the existence within the educational establishment of an office for the trainees and the care with which the Praxissemester are regulated by the establishment demonstrate, in my opinion, that the latter cannot be separated from the rest of the course of studies.

11 — Annex 9 to the order for reference, see paragraph 1 for its scope of application.

12 — Ibid.

13 — Paragraphs 11 to 16.

14 — Observations of the defendant at p. 10.

15 — Annex 2 to the order for reference.

16 — See Chapter 5.4.2(h) of the detailed provisions of the Studies Regulations at Annex 2 to the order for reference.

17 — Annex 10 to the order for reference.

18 — Paragraph 7(5) of the general observations of the Studies Regulations, Annex 2 to the order for reference; see also the fifth subparagraph of Chapter 5.2 of the detailed provisions, ibid.

26. Finally, as already noted, the third subparagraph of Article 11(a) lays down a different set of rules for the education and training given by the Fachhochschulen over a period of three years. These are only recognized when accompanied by four years of professional experience.

27. As the Court pointed out in *Egle* with respect to Article 4(1):

'That requirement of professional experience in the case of training given over three years would be meaningless if training consisting of four years of studies was also to fall within the scope of that rule. If the Community legislature had wished to bring within its scope all courses of architectural training provided in the Fachhochschulen in the Federal Republic of Germany, it would not have distinguished between those lasting three years and those lasting four years.' [19]

28. Therefore, I propose that the Court give the following ruling:

The third subparagraph of Article 11(a) of Council Directive 85/384/EEC of 10 June 1985, on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services, must be interpreted as meaning that education and training which lasts for four years and which includes two integrated 'Praxissemester' supervised by a 'Fachhochschule' as referred to in that provision, must be regarded as comprising four years of studies within the meaning of the latter.

19 — Paragraph 14 of the judgment supra.